



DATE: June 18, 1973

National Archives and Records Service

Washington, D.C. 20408

REPLY TO
ATTN OF:

Archivist of the United States

SUBJECT:

ICRC Appeals Procedure

Richard C. Tufaro

In our opinion, an inconsistency exists between the proposed ICRC appeals procedure, Section 3(C), Acceptance of Appeal, and the requirements of the NSC Directive, Section III (D), Review of Classified Material Over 30 Years Old.

The ICRC appeals procedure proposes that the Committee shall accept appeals "if, in the discretion of the Committee, the appeal raises substantive issues." It is, therefore, left up to the Committee whether an appeal will or will not be accepted. The NSC Directive, Section III(D), Review of Classified Material Over 30 Years Old, states:

"Classification shall be continued in either case only where the head of the Department concerned makes at that time the personal determination required by Section 5 (E)(1) of the Order. The Archivist shall promptly notify the requester of such determination and of his right to appeal the denial to the Interagency Classification Review Committee."

The Executive Order requires the head of the originating department or agency to personally authorize the exemption of 30 year old material from declassification. Since the head of an agency or department holds a position superior to the Departmental Review Committee of his agency, it is illogical to assume that the agency head's decision to exempt a document could be over-turned by the Departmental Review Committee. Therefore, as the NSC Directive indicates, an appeal from a denial for 30 year old material must go directly to the ICRC.

In addition, Section 11 of Executive Order 11652 assigns to the Archivist of the United States the responsibility for the review and declassification of information and material which has been classified by a President, his White House Staff, or special committee or commission appointed by him and which the Archivist has in his custody at any archival depository, including a

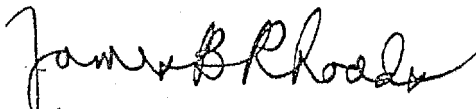
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Presidential Library. Since a determination by the Archivist is not subject to the review of a Departmental Review Committee, it would appear that the ICRC must also accept any appeal arising from the Archivist's denial of declassification of material in his custody which was classified by the White House.

Because of these requirements, certain changes in the text of the ICRC appeals procedure are necessary. We believe that the following language should be added to Section 3(C) of the appeals procedure.

C. Acceptance of Appeal. An appeal of a determination denying a declassification request involving classified documents which are thirty (30) or more years old must be accepted for review by the Committee as prescribed in Section III(D) of the National Security Council Directive of May 17, 1972. The Committee must also accept for review any appeal of a determination denying a declassification request involving information or material which the Archivist of the United States has in his custody at any archival depository, including a Presidential Library, which has been classified by a President, his White House Staff or special committee or commission appointed by him and which is ten (10) or more years old. An appeal of a determination denying a declassification request involving classified documents which are ten (10) or more years old but less than thirty (30) years old, shall be accepted for review by the Committee if, in the discretion of the Committee, the appeal raises substantive issues. . .

The NSC Directive and the Executive Order seem to prescribe that the Committee must accept all appeals involving 30 year old and White House classified material. They do not seem to be matters which can be left to the discretion of the ICRC.


JAMES B. RHOADS